REMARKS

Claims 1-20 have been subjected to restriction for prosecution on the merits under 35 U.S.C. §§121 and 372. Claims 1-22 are pending after entry of the instant paper.

Claim 1 has been amended by replacing "which" with the phrase "wherein said monocyte-derived multipotent cell" for clarification.

Claim 2 has been amended to be dependent from claim 1 and the terms "derived from a monocyte, which" and "expresses" have been deleted.

Claim 9 has been amended to be dependent from claim 1.

Claims 11 and 13-20 have been amended to be dependent from claim 1 and 2

Claim 16 has been amended to include the phrase "under a condition inducing differentiation into mesodermal cell or mesodermal tissue, such as a culture under a condition maintaining mesodermal cells." Support for the addition to claim 16 can be found throughout the application as published, for example, paragraph 26.

Claims 17-20 have been amended to include the term "and/or".

Claims 21 and 22 have been added. Support for new claim 21 and 22 can be found throughout the application as published, for example, in Example 18, paragraph 65 and in claims 1-2 and 9-10 as originally presented.

No new matter has been introduced by these amendments. Support may be found throughout the specification and claims as originally filed.

Response To Restriction Requirement

In the Examiner's opinion, as set forth in the Detailed Action, the application contains claims directed to ten groups of inventions as follows:

Group I, claims 1-8 and 17-18, drawn to a monocyte-derived multipotent cell and a therapeutic agent comprising the multipotent cell.

Group II, claims 9-10, drawn to a method for preparing a monocyte-derived multipotent cell.

Group III, claims 11-12, drawn to a mesenchymal progenitor, mesenchymal cell or a mesenchymal tissue.

Group IV, claim 13, drawn to a myocardial progenitor, myocardial cell or a myocardial tissue.

Group V, claims 14 and 18, drawn to a neural progenitor, neuron or a nerve tissue and a therapeutic agent.

Group VI, claim 15, drawn to an endothelial progenitor, endothelial cell or an endothelial tissue.

Group VII, claims 16-17, drawn to a mesodermal progenitor, mesodermal cell or a mesodermal tissue and a therapeutic agent comprising the cells.

Group VIII, claims 19-20, drawn to a treating method comprising administering the monocyte-derived multipotent cell.

Group IX, claim 19, drawn to a treating method comprising administering the mesodermal progenitors, cells or tissues.

Group X, claim 20, drawn to a treating method comprising administering the neural progenitors, cells or tissues.

In response to the Official Action dated December 15, 2006, in which pending claims 1-20 were subjected to an election, the applicants have provisionally elected **Group I, claims 1-8 and 17-18**. The Applicants have also added claims 21-22. Applicants respectfully disagree with the restriction requirement imposed by the Examiner and the characterizations made of the claimed invention. Accordingly, as is set forth in detail below, this election is made with traverse.

It is the Examiner's position that restriction is appropriate because the inventions or groups of inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1. Applicants respectfully disagree with the Examiner's position. Applicants respectfully submit that the Requirement for Restriction is improper for at least the reasons stated

below, and request that the Restriction Requirement be withdrawn and all presented claims be examined on the merits.

According to M.P.E.P. §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

(1) The inventions must be independent or distinct as claimed; **and**

(2) There must be serious burden on the Examiner if restriction is not required.

Applicants respectfully submit that (1) all groups of restricted claims are properly presented in the same application; (2) undue diverse searching would not be required; and (3) all claims should be examined together.

The Examiner has not shown that examination of all the pending claims would require undue searching and/or place a serious burden on the Examiner, which is a requisite showing for proper issuance of a restriction requirement. In fact, applicants submit that to properly search any one group, the other groups must be considered as well to perform a comprehensive search.

Applicants traverse the contention that the groups of inventions are not linked as to form a single general inventive concept and believe that the contention is moot in view of the aforementioned amendments. Group I is directed to a monocyte-derived multipotent cell. Groups II – X are directed to methods of preparing the monocyte-derived multipotent cell, products of the monocyte-derived multipotent cell, and/or methods of using the monocyte-derived multipotent cell, all of which depend from and are linked to Group I. Therefore, the Examiner would only need to search prior art for Group I, as Groups II-X are linked to Group I, in this instance, monocyte-derived multipotent cells. Hence, combining and searching all of the groups together would not result in "undue diverse searching" for the Examiner. Accordingly, applicants respectfully traverse the requirement for restriction at least on the grounds that examining the identified groups would not be unduly burdensome. So at a minimum, these ten groups should be examined together.

The claims in Groups II and VIII - X are directed to methods of preparation and methods of treatment, respectively, which depend from the claims of Group I. It is respectfully requested that if Group I is found allowable, that Groups II and VIII – X are rejoined and withdrawn from restriction. In view of the foregoing, the applicants respectfully submit that

claims 1-22 as listed herein are properly presented in this application and that the claims are allowable over the art prior art.

CONCLUSION

Based on the foregoing amendments and remarks, applicants respectfully request reconsideration and withdrawal of the election requirement of claims and allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **13-4500**, Order No. 4439-4036.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **13-4500**, Order No. 4439-4036.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: January 12, 2007 By: _____
Evelyn M. Kwon
Registration No. 54,246

Correspondence Address:
MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101
(212) 415-8700 Telephone
(212) 415-8701 Facsimile